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Chapter:	Federal Assurances	
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## Purpose

P. L. 96-272 sets forth requirements for foster care and adoption assistance programs under title IV-E in order to provide assurances and certifications regarding the proper administration of the state's IV-E program.

## Policy

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The department operates its foster care and adoption assistance programs in compliance with program requirements outlined below.

## **SECTION 1. ORGANIZATION**

### ***A. Designation and Authority of State Agency***

Under the authority of the Agency of Human Services, the departments administers and supervises the administration of the programs under Vermont's Title IV-E Plan and the Child Welfare Services Plan under title IV-B of the Social Security Act.

### ***B. State Agency Structure and Function***

The department has available upon request an organizational chart and a description of the functions of each of its organizational units as they relate to the administration or supervising the administration of the title IV-E foster care maintenance and adoption assistance payments program.

### ***C. Statewide Operations***

The Title IV-E Plan for foster care and adoption assistance payments is in effect in all political subdivisions of the state and is mandatory upon those political sub-divisions administering it.

### ***D. Coordination with Titles IV-A and IV-B Programs***

The Title IV-E program is coordinated at the local level with the programs at the state or local level assisted under Titles IV-A, IV-B and XX of the Social Security Act and under all appropriate provisions of federal law.

### ***E. Child Support Enforcement for Certain Children in Foster Care***

The department takes all appropriate steps, including cooperative efforts with the state agencies administering the plans approved under parts A and D, to secure an assignment to the state of any rights to support on behalf of each child receiving foster care maintenance payments under Title IV-E.

## **SECTION 2. FOSTER CARE MAINTENANCE PAYMENTS**

### ***A. Eligibility***

- 1) Payments are provided for each child:

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- a) who meets the requirements of 406(a) of the Social Security Act (as in effect 7/16/96) is removed from the home of a relative specified in 406(a) and is placed in foster care if:
  - i ) the removal and foster care placement meet the requirement of paragraph (2) in 472(a) of the Act; and
  - ii ) the child, while in the home, would have met the aid eligibility requirement of paragraph (3) in 472(a) of the Act.
- b) whose removal and foster care placement are in accordance with:
  - i ) a voluntary placement agreement entered into by the child's parent or legal guardian, who is the relative referred to in paragraph (1) of 472(a) of the Act; or
  - ii ) a judicial determination to the effect that continuation of residence in the home would be contrary to the welfare, or that the placement would be in the best interest of the child and that reasonable efforts of the type described in 471(a)(15) for a child were made. The contrary to the welfare determination will be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child will not be eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care; and
- c) placement and care in a foster family home or child care institution (as defined in 472(c) of the Social Security Act) is the responsibility of either:
  - i) the department, or
  - ii) any other public agency with whom the department has made an agreement which is still in effect, and
- d) who:
  - i) received aid, in the home referred to in section 472(a)(1), under the state plan approved under 402 of the Social Security Act in or for the month in which either voluntary agreement was entered into or court proceedings leading to the judicial determination, referred to in 472(a)(2)(A) of the Act were initiated, or
  - ii) would have received aid in or for such month if application for such aid had been made, or
  - iii) had been living with a relative specified in 406(a) of the Social Security Act within six months prior to the month in which a voluntary agreement was entered into or court proceedings leading to the judicial determination, referred to in 472(a)(2)(A) of the Act were initiated, and would have received aid in or for such

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- month if the child had been living in the home with such relative and an application had been made for aid under title IV-A of the Social Security Act.
- iv) had resources (determined under 402(a)(7)(B) of the Act (as in effect 7/16/96) that had a combined value of not more than \$10,000.
- 2) In any case where the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the approved title IV-A State plan in or for the month in which such agreement, described in 472(a)(2)(i) was entered into or court proceedings leading to the judicial determination, referred to in 472(a)(2)(A)(ii) were instituted, such child shall be considered to satisfy the requirements of 472(a)(3) with respect to that month, if the child would have satisfied such requirements but for the disqualification.
- 3) Removal.
- a. For the purposes of meeting the requirements of section 472(a)(2)(A)(1) of the Social Security Act, a removal from the home must occur pursuant to:
    - i. a voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or
    - ii. a judicial order for a physical or constructive removal of the child from a parent or specified relative.
  - b. A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the department.
  - c. A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.
- 4) Living with a specified relative. For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(2)(A) of the Social Security Act and all of the conditions under section 472(a)(3)(A), one of the two following situations will apply:
- a. the child was living with the parent or specified relative, and was ANFC/RUFA eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or
  - b. the child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court

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proceedings, and the child would have been ANFC/RUFA eligible in that month if he or she had still been living in that home.

#### **B. *Voluntary Placement***

- 1) Foster care maintenance payments are made in cases of voluntary placement of a minor child out of the home by or with the participation of the department only if:
  - a) the department has fulfilled all of the requirements of 472 of the Social Security Act, as amended; Sections 422(b)(8) and 475(5) of the Social Security Act; and 45 CFR 1356.21(f),(g),(h) and (i) of the Social Security Act, and
  - b) the assistance of the department has been requested by the child's parents or legal guardian, and
  - c) there is a written voluntary placement agreement, binding on all parties to the agreement, which specifies at a minimum the legal status of the child and the rights and obligations of the parents or guardians, the child and the department while the child is in placement.
- 2) Federal financial participation is claimed only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction within the first 180 days of the date of placement to the effect that the continued voluntary placement is in the best interests of the child.
- 3) The department has established a uniform procedure or system, consistent with state law, for revocation by the parents of a voluntary placement agreement and return of the child.

#### **C. *Payments***

- 1) Title IV-E foster care maintenance payments for a child in foster care may cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation with family, or other caretakers and reasonable travel for the child to remain in the schools in which the child is enrolled at the time of placement. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences.



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- 2) Title IV-E foster care maintenance payments are made only on behalf of an eligible child who is:
  - a) in the foster family home of an individual, whether the payments are made to such individual or to a public or private child placement or child care agency, or
  - b) in a child care institution, whether the payments are made to such institution or to a public or private child placement or child care agency. Such payments are limited to include only those items, which are included in the term “foster care maintenance payments”; (defined in 475(4) of the Social Security Act).
- 3) Foster family home means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the state licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the state agency responsible for approval or licensing of such facilities. Foster family homes that are approved are held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements.
- 4) Child care institution, for purposes of Title IV-E, means a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the state in which it is situated or has been approved by the agency of such state or tribal licensing authority (with respect to child care institutions on or near Indian reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing, except, in the case of a child who has attained 18 years of age, the term includes supervised independent living setting in which the individual is living independently. This definition does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.
- 5) Administrative costs associated with an otherwise eligible child who is not placed in licensed foster care settings, and who is removed in accordance with section 472(a) from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), shall be considered only for expenditures:
  - a. for a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster home or:

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- b. for a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home of child care institution licensed or approved by the State.
- 6) Administrative costs associated with an otherwise eligible child who is not placed in licensed foster care settings, and who is potentially eligible for benefits under the State's approved title IV-E state plan and at a imminent risk of removal from the home , shall be considered for expenditures only if:
  - a. reasonable efforts are being made in accordance with section 471(a)(15) to prevent the need for , or if necessary to pursue, removal of the child from the home; and
  - b. the State agency has made, not less often than every 6 months, a determination (or recommendation) as to whether he child remains at imminent risk of removal from the home.
- 7) Child of a minor parent in foster care. Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs are limited to funds expended on those items described in the definition of foster care maintenance payments.

#### ***D. Case Review System***

##### **1) Case Plan**

To meet the case plan requirements of 471(a)(16), 475(1) and 475(5)(A) and (D) of the Social Security Act, the department has promulgated policy materials and instructions for use by staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child:

- a) is a written document that is a discrete part of the case record which is developed jointly with the parent(s) or guardian(s) of the child;
- b) is developed within a reasonable period, to be established by the state, but in no event later than 60 days from the child's removal from the home.
- c) includes a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family;
- d) includes a description of the type of home or institution in which the child is to be placed;



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- e) includes a discussion of the safety and appropriateness of the placement and how the responsible agency plans to carry out the judicial determination made with respect to the child in accordance with 472(a)(2)(A) of the Social Security Act;
- f) includes a plan for assuring that the child receives safe and proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home to facilitate the child's return to his or her own safe home or the permanent placement of the child;
- g) includes a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;
- h) includes a discussion of the appropriateness of the services that have been provided to the child under the plan;
- i) where appropriate, for a child 16 or over, includes a written description of the programs and services which will help such child prepare for the transition from foster care to independent living;
- j) no sooner than 90 days before a child's 18<sup>th</sup> birthday the case worker will assist the youth in developing a transition plan that includes: housing, health insurance and health care treatment decisions, education, opportunities for mentoring, continued support services, workforce supports and employment services. This plan must be directed by the child;
- k) documents the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Social Security Act. When the case plan goal is adoption, at a minimum such documentation shall include child-specific recruitment efforts such as the use of state, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements;
- l) If a child is in a placement with a relative who is receiving guardianship assistance payments the case plan shall include: steps the agency has taken that reunification or adoption are not appropriate; reasons for any separation of siblings during placement; reasons why the GAP is in child's best interest; ways the eligibility requirements are met by the child; efforts to discuss more permanent options with the relative caregiver; efforts to discuss GAP arrangements with the child's parents;
- m) includes a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child;
- n) if the child has been placed in a foster family home or child care institution a substantial distance from the home of the parent(s), or in a different state, sets forth the reasons why such placement is in the best interests of the child, and
- o) if the child has been placed in foster care in a state outside the state in which the child's parent(s) are located, assures that an agency caseworker, of either state, visits

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the foster home or institution no less frequently than every 6 months and submits a report on the visit to the department;

- p) a plan for ensuring the educational stability of the child while in foster care, including:
  - i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
  - ii) an assurance that the State/Tribal agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or
  - iii) if remaining in such school is not in the best interests of the child, assurances by the State/Tribal agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school;
- q) incorporate the health and education records of the child, including the most recent information available regarding:
  - i) the names and addresses of the child's health and education providers;
  - ii) the child's grade level performance;
  - iii) the child's school record;
  - iv) assurances that the child's placement in foster care takes into account the proximity to the school in which the child is enrolled at the time of placement;
  - v) a record of the child's immunizations;
  - vi) the child's known medical problems;
  - vii) the child's medications;
  - viii) any other relevant health and education information determined to be appropriate by the Department.

## 2) Case Review

The department has a case review system, which meets the requirements of 475(5) and 475(6) of the Social Security Act and assures that:

- a) a review of each child's status will be made no less frequently than once every six months either by a court or by an administrative review to:
  - i) determine the safety of the child, the continuing need for and appropriateness of the placement,
  - ii) determine the extent of compliance with the case plan,
  - iii) determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement, and

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iv) project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship.

b) If an administrative review is conducted, the following requirements will be met:

- i) the review will be open to the participation of the parents of the child, and
- ii) the review will be conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of or delivery of services to either the child or the parents who are the subject of the review.

### 3) Permanency Hearing

- a) To meet the requirements of the permanency hearing, the State holds permanency hearings for all children under the responsibility for placement and care of the department, including children for whom the department claims federal reimbursement for the costs of voluntary foster care maintenance payments.
- b) The permanency hearing takes place within 12 months of the date the child is considered to have entered foster care (as defined within the meaning of 475(5)(F)) and not less frequently than every 12 months thereafter during the continuation of foster care.
- c) When a court determines that reasonable efforts to return the child home are not required, a permanency hearing is held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.
- d) For the purposes of this requirement, a permanency hearing will determine:
  - i) the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, or placed for adoption and the state will file a petition for termination of parental rights, or referred to legal guardianship, or (in cases where the department has documented to the state court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement;
  - ii) in the case of a child who will not returned to the parent, the hearing shall consider in-State and out-of-State placement options,
  - iii) in the case of a child placed out of the state in which the home of the parent(s) of the child is located, whether the out-of state placement continues to be

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- appropriate and in the best interests of the child,
  - iv) in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living, and,
  - v) in any permanency hearing held with respect to the child, including any hearing regarding the transition of the youth from foster care to independent living, procedural safeguards shall be applied to assure the court consults with the child regarding the proposed permanency or transition plan.
- e) Procedural safeguards are applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.
  - f) If the department concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the department will document to the court the compelling reason for the alternate plan.
  - g) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of permanency hearing are extended by the administrative body.
- 4) Health and Educational Records
- a. child's health and education record is reviewed and updated, and copies supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.
  - b. The health and education records are supplied to the youth at no cost at the time the child leaves foster care by reason of having attained the age of majority under State law.

## 5) Notice

The state provides the foster parent(s) of a child and any pre-adoptive parent or relative providing care for the child with timely notice of and the right to be heard in permanency hearings and six-month periodic reviews held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver. Notice of and a right to be heard does not include the right to standing as a party to the case.

### *E. Medical and Social Services*

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For purposes of titles XIX and XX, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in 406 of the Social Security Act (as so in effect 7/16/1996) and shall be deemed to be a recipient of aid to families with dependent children under part A of this title (as so in effect 7/16/1996). Titles XIX and XX services shall be available to such child in the state in which the child resides.

***F. Specific Goals in State Law***

- 1) The department will formulate for each fiscal year a specific goal as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care receiving assistance under a state title IV-E program) who at any given time during the fiscal year will have been in foster care for over 24 months. Vermont's goal is 20%. Steps taken to achieve the specific goal established include:
  - a) Inclusion of policy regarding permanency planning in the department's casework manual;
  - b) Inclusion of goals related to permanency in the state's child welfare services plan;
  - c) Measurement of indicators related to the established goal of permanency.
  - d) Review of permanency issues in Child and Family Services Reviews.

***G. Preventive and Reunification Services***

**1) Reasonable Efforts to Maintain Family Unit**

The state makes reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his or her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety is the department's paramount concern.

**2) Reasonable Efforts to Achieve Permanency**

If continuation of reasonable efforts as described in section 471(a)(15)(B) of the Social Security Act is determined to be inconsistent with the permanency plan for the child, reasonable efforts are made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child.

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- 3) Judicial determination of reasonable efforts to prevent a child's removal from the home.
  - a) When a child is removed from his or her home, the judicial determination, as to whether reasonable efforts were made or were not required to prevent the removal, is made no later than 60 days from the date the child is removed from the home.
  - b) If the determination concerning reasonable efforts to prevent the removal is not made as specified above, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.
- 4) Judicial determination of reasonable efforts to finalize a permanency plan.
  - a) The department obtains a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child is considered to have entered foster care in accordance with the definition at Sec. 1355.20 of the regulations, and at least once every 12 months thereafter while the child is in foster care.
  - b) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under title IV-E from the end of the 12th month following the date the child is considered to have entered foster care or the end of the 12th month following the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.
- 5) Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the department obtains a judicial determination that such efforts are not required because:
  - a) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in state law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
  - b) A court of competent jurisdiction has determined that the parent has been convicted of:
    - i) murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;



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- ii) voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
    - iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or
    - iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or,
  - c) The parental rights of the parent with respect to a sibling have been terminated involuntarily.
- 6) Concurrent planning
- a) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.
  - b) Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-state placements, may be made concurrently with reasonable efforts to reunify the child and family.
- 7) Use of the Federal Parent Locator Service.

The department has made provisions to seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

#### ***H. Termination of Parental Rights***

- 1) The state will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):
  - a) whose child has been in foster care under the responsibility of the department for 15 of the most recent 22 months. The petition must be filed by the end of the child's 15<sup>th</sup> month in foster care. In calculating when to file a petition for termination of parental rights, the department:
    - i) will calculate the 15 out of the most recent 22 month period from the date the child entered foster care as defined at section 475(5)(F) of the Social Security Act;
    - ii) will use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;
    - iii) will not include trial home visits or runaway episodes in calculating 15 months in foster care; and,
    - iv) only applies section 475(5)(E) of the Social Security Act to a child once if the state does not file a petition because one of the exceptions applies;

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- b) whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under state law). The petition to terminate parental rights is made within 60 days of the judicial determination that the child is an abandoned infant; or,
  - c) who has been convicted of one of the felonies listed above. Under such circumstances, the petition to terminate parental rights is to be made within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.
- 2) The department may elect not to file or join a petition to terminate the parental rights of a parent of this section if:
- a) at the option of the department, the child is being cared for by a relative;
  - b) the department has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child;
  - c) the department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.
- 3) When the department files or joins a petition to terminate parental rights, it concurrently begins to identify, recruit, process, and approve a qualified adoptive family for the child.

***I. Date Considered to Have Entered Foster Care***

A child shall be considered to have entered foster care on the date of physical removal.

***J. Documentation of Judicial Determinations***

The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, are explicitly documented and made on a case-by-case basis and so stated in the court order.

- 1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made.

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- 2) Neither affidavits nor nunc pro tunc orders are used as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.
- 3) Court orders that reference state law to substantiate judicial determinations are not acceptable, even if state law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

#### ***K. Trial Home Visits***

If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances, the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

#### ***L. Training***

Before a child in foster care is placed with prospective foster parents, the prospective foster parents are adequately prepared with the appropriate knowledge and skills to provide for the needs of the child. As necessary, such preparation is continued after placement of the child.

#### ***M. Definition of Child***

For the purposes of the title IV-E foster care program under section 472, the term 'child' means

- i. an individual who has not attained 18 years of age; or
  - a. who is in foster care under the responsibility of the Department
  - b. who has attained 18 years of age but who has not 21 years of age and
  - c. who meets any of the following conditions
    - I. the child is completing secondary education or a program leading to an equivalent credential;
    - II. the child is enrolled in an institution which provides post-secondary or vocational education;
    - III. the child is participating in a program or activity designed to promote, or remove barriers to, employment;
    - IV. the child is employed for at least 80 hours per month; or
    - V. the child is incapable of doing any of the above described activities due to a medical condition, which incapability is supported by regularly updated

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information in the case plan of the child.

### **SECTION 3. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM**

#### ***A. State Plan***

1. In the its Child and Family Services Plan, the department describes how it will:
  - a) Design and deliver programs that meet the purposes of the Chafee Foster Care Independence Programs as stated in section 477(a).
  - b) Ensure all political subdivisions are served by the program, though not necessarily in a uniform manner
  - c) Ensure that the programs serve children of various ages and at various stages of achieving independence
  - d) Involve the public and private sectors in helping adolescents in foster care achieve independence.
  - e) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.
  - f) Cooperate in national evaluations of the effects of the programs in achieving the purposes of the Chafee Foster Care Independence Program.
- 2) The plan specifies that the department administer, supervise, and oversee the programs carried out under the plan.

#### ***B State Certifications***

- 1) The department provides assistance and services to youth who have left foster care because they have attained 18 years of age and have not attained 21 years of age.
- 2) Not more than 30 percent of the amounts paid to the state from its allotment for a fiscal year are expended for room and board for youth who have left foster care because they have attained 18 years of age and have not attained 21 years of age.
- 3) None of the amounts paid to the state from its allotment are expended for room or board for any child who has not attained 18 years of age.
- 4) Training funds provided under the program of Federal payments for foster care and adoption assistance are used to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for

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adolescents

- 5) The department has consulted widely with public and private organizations in developing the plan and has given all interested members of the public at least 30 days to submit comments on the plan.
- 6) The department has made every effort to coordinate the state programs receiving funds provided under this section with other federal and state programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Social Security Act of 1974), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.
- 7) As there is not a federally recognized Indian tribe in the, no tribe has been consulted about the programs to be carried out under the plan nor have there been efforts to coordinate the programs with tribes. Benefits and services under the programs are made available to Indian youth in the state on the same basis as to other youth in the state.
- 8) Adolescents participating in the program participate directly in designing their own program activities that prepare them for independent living and the adolescents are required to accept personal responsibility for living up to their part of the program.
- 9) The department has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.

#### **SECTION 4. ADOPTION ASSISTANCE PAYMENTS**

##### ***A. Eligibility***

The State must apply the "applicable child" eligibility requirements to anyone who is an "applicable child" based on his or her age if the child has attained the applicable age, as indicated in section 473(e)(1)(B) of the Act, any time before the end of the Federal fiscal year during which the adoption assistance agreement is entered into. The applicable age for a child begins at 16 years old in FFY 2010 and decreases by two years for each fiscal year until a child of any age meets the applicable age requirements in FFY 2018. Beginning October 1, 2017, the applicable child eligibility criteria will apply to children of all ages.

- 1) Adoption assistance payments may be made to parents who adopt a child with special needs. A child shall not be considered a child with special needs unless:
  - a) the department has determined he or she cannot or should not be returned to the

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- home of his or her parents;
  - b) the department had first determined that a specific factor or condition exists with respect to the child (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed for adoption without providing adoption assistance and medical assistance under Title XIX; or the child meets all medical or disability requirements of Title XVI with respect to eligibility for supplemental security income benefits; and
  - c) a reasonable, but unsuccessful, effort has been made to place the child without providing assistance except where it would be against the best interests of the child due to such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child.
- 2) Adoption assistance payments are made to adoptive parents who have entered into an adoption assistance agreement with the department.
- 3) Adoption assistance payments are made with respect to an adoptive child who
- a) was removed from the home of a relative specified in 406(a) of the Act (as in effect 7/16/96) and placed in foster care in accordance with a voluntary placement agreement as provided under section 474 (or section 403, as in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child, and
    - i) received aid, in that relative's home, under the State plan approved under 402 of the Act (as in effect 7/16/96), or would have received aid under such plan had application been made, in or for the month the voluntary placement agreement was entered into or court proceedings leading to the judicial determination referred to in section 473(a)(2)(A)(i) were initiated; or
    - ii) had been living specified in 406(a) of the Act within six months before the month in which voluntary placement agreement was entered into or court proceedings leading to the judicial determination referred to in section 473(a)(2)(A)(i), were initiated and would have received aid in that relative's home under the State plan approved under 402 of the Act for the month, if in that month the child had been living with such relative and application had been made.
  - b) meets all the requirements of title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits; or
  - c) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor



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parent as provided in section 475(4)(B); and

- d) has been determined by the department to be a child with special needs.
  - e) meets the requirements of 472(a)(4) of the Act in any case in which the child is an alien as described in such section of the Act.
- 4) Any child who meets the following requirements will be treated as meeting the requirements to receive adoption assistance payments:
- a) meets the requirements of 473(a)(2)(A)(ii)(II);
  - b) is determined to be eligible for adoption assistance payments under 473(e) of the Act with respect to a prior adoption (or would have been determined eligible had ASFA been in effect at the time the determination would have been made; and
  - c) is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died; and
  - d) fails to meet the requirements of section 473(a)(2)(A)(i) but will meet such requirements if the child is treated as if the child is in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under section 473 of the Act and the prior adoption is treated as never having occurred.

#### ***A. II. Eligibility***

Non applicable Child (Currently effective, but beginning October 1, 2008, decreases based on the criteria in 473 (e) until October 1, 2017, at which time this authority ends).

- 1) Adoption assistance payments may be made to parents who adopt a child with special needs. In the case of a child who is not an applicable child, as defined in 473 (e), for a fiscal year, the child shall not be considered a child with special needs unless:
  - a) the department has determined the child cannot or should not be returned to the home of his or her parents; and
  - b) the department has first determined that a specific factor or condition exists with respect to the child (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental or emotional disabilities) because of which it is reasonable to conclude that such child cannot be placed for adoption without providing adoption assistance or medical assistance under title XIX; or the child meets all medical or disability requirements of Title XVI with respect to eligibility for supplemental security income benefits: and

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c) a reasonable, but unsuccessful, effort has been made to place the child without providing assistance except where it would be against the best interests of the child due to such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child.

2) In the case of a child who is not an applicable child for the fiscal year as defined in 473 (e), adoption assistance payments may be made if the child has been determined by the State/Tribe pursuant to section 473 (c) to be a child with special needs and:

a) was removed from the home of a relative specified in section 406 (a) of the Act (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

- i) received AFDC, in that relative's home, under the State plan approved under section 402 of the Act (as in effect 7/16/96), or would have received AFDC under such plan had application been made, in or for the month the voluntary placement agreement was entered into or court proceedings leading to the judicial determination referred to in section 473(a)(2)(A)(i) were initiated; or
- ii) had been living with a relative specified in section 406(a) of the Act within six months before the month in which a voluntary placement agreement was entered into or court proceedings leading to the judicial determination referred to in section 473(a)(2)(A)(i), were initiated and would have received AFDC in that relative's home under the State plan approved under section 402 of the Act for that month, if in that month the child had been living with such relative and application had been made;

b) meets all the requirements of title XVI of the Act with respect to eligibility for supplemental security income benefits; or

3) In the case of a child who is not an applicable child for the fiscal year as defined in 473 (e), the child will be treated as meeting the requirements to receive adoption assistance payments if the child:

a) meets the requirements of section 473(a)(2)(A)(i)(II); and

b) is determined eligible for adoption assistance payments under 473 of the Act with respect to a prior adoption; and

c) is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents

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have died; and

d) fails to meet the requirements of section 473(a)(2)(A)(i) but will meet such requirements if the child is treated as if the child is in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under section 473 of the Act and the prior adoption is treated as never having occurred.

***B. Payments – Amounts and Conditions***

- 1) Payments are made for nonrecurring adoption expenses incurred by or on behalf of adoptive parents in connection with the adoption of a child with special needs, directly through the department or through another public or nonprofit private agency, in amounts determined through an agreement with the adoptive parents, and
- 2) In any case where the child meets the requirements of 473(a)(2) of the Social Security Act, the department may make adoption assistance payments to adoptive parents, directly through the department or through another public or nonprofit private agency, in amounts so determined through an adoption assistance agreement.
- 3) The amount of such payment
  - a) takes into consideration the circumstances of the adopting parents and the needs of the child being adopted;
  - b) may be adjusted periodically with the concurrence of the adoptive parents to reflect changing circumstances; and
  - c) does not exceed the foster care maintenance payment that would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.
- 4) In determining eligibility for adoption assistance payments, there is no income eligibility requirement (means test) for the adoptive parents.
- 5) Payments are terminated when the department determines that:
  - a) the child has attained the age of 18 ; or
  - b) the child has attained 21 years of age, if the department determines that the child has a mental or physical disability which warrants the continuation of assistance to age 21; or
  - c) the parents are no longer legally responsible for the support of the child, or the child is no longer receiving support from the adoptive parents.
- 6) The adoptive parents are required to inform the department of circumstances that would make them ineligible for adoption assistance payments or eligible for adoption

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assistance payments in a different amount.

- 7) No payment may be made to parents with respect to any applicable child for a fiscal year that:
  - a) would be considered a child with special needs under 473(c)(2);
  - b) is not a citizen or resident of the United States; and
  - c) was adopted outside of the United States or was brought into the United States for the purposes of being adopted.
  
- 8) A child that is not a citizen or resident of the US and was adopted outside of the US or brought into the US for the purpose of being adopted may be eligible for adoption assistance payments if the initial adoption of the child by parents is a failure and the child is subsequently placed into foster care.

### ***C. Adoption Assistance Agreement***

- 1) An adoption assistance agreement is a written agreement, binding on all parties, between the department, other relevant agencies, and the prospective adoptive parents.
  
- 2) The adoption assistance agreement meets the requirements of 475(3) of the Social Security Act as stated below:
  - a) is signed by the adoptive parents and a representative of the department and in effect before adoption assistance payments are made under title IV-E, but no later than the finalization of the adoption;
  - b) specifies the duration of the agreement;
  - c) specifies the amount of the adoption assistance payments (if any) and the nature and amount of any other payments, services and assistance to be provided (including nonrecurring adoption expenses in agreements that become effective on or after January 1, 1987, for expenditures incurred by the parents on or after that date);
  - d) specifies the child's eligibility for title XIX and title XX;
  - e) specifies, that the agreement remains in effect regardless of the state of residence of the adoptive parents;
  - f) contains provisions for the protection of the interests of the child in case the adoptive parents and child should move to another state while the agreement is in effect; and
  - g) if a needed service specified in the agreement is not available in the new state of residence, the state making the original adoption assistance payment remains financially responsible for providing the specified service(s).

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#### ***D. Medicaid and Social Services***

- 1) For the purposes of titles XIX and XX, any eligible child for whom there is an adoption assistance agreement in effect under 473(a)(2) (whether or not adoption assistance payments are being made) shall be deemed to be a dependent child as defined in 406 of the Social Security Act and shall be deemed to be a recipient of AFDC under part A of title IV of the Social Security Act (as so in effect 7/16/1996) in the state in which such child resides. Any child of such eligible child will be eligible for such services.
- 2) The state shall provide health insurance coverage (through one or more state medical assistance programs), with the same type and kind of benefits as those which would be provided for children by the state under title XIX, or a comparable state medical plan, for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the department and an adoptive parent or parents, and who the department has determined cannot be placed with an adoptive parent or parents without medical assistance due to special needs for medical, mental health or rehabilitative care.
- 3) In the event that the state provides such coverage through a state medical assistance program other than the program under title XIX, and the state exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the state plan under this part for purposes of section 1902(a)(10)(A)(i)(I). In determining cost-sharing requirements, the department shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent; to the extent coverage is provided through a state medical assistance program, with the rules under such program.

#### ***E. Eligibility for Adoption Incentive Funding***

Vermont is eligible for adoption incentive funds in FY's 2008 through 2012, if:

1. a the number of foster child adoptions during the fiscal year exceeds the number of foster child adoptions in fiscal year 2007; or
- b. the number of older child adoptions during the fiscal year exceeds the base number of older child adoptions for the fiscal year; or
- c. Vermont's foster child adoption rate for the fiscal year exceeds the highest ever foster child adoption rate
2. Vermont is in compliance with data requirements in section 473A(c) of the Act; and
3. Vermont provide health coverage to any child with special needs (as determined under Section 473(c) for whom there is in effect an adoption assistance

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agreement.

#### ***F. Adoption Tax Credit***

The department will inform every individual who is adopting or who is considering adopting a child who is in foster care under of the potential eligibility for a Federal tax credit.

#### ***G. Definition of Child***

For the purposes of the title IV-E adoption assistance program under section 473, the term 'child' means:

- i. an individual who has not attained 18 years of age; or
- ii. at the option of the department, an individual
  - a. with respect to whom an adoption assistance agreement is in effect under section 473 if the individual had attained age 16 before the adoption assistance agreement became effective and
  - c. who meets any of the following conditions:
    - I. the child is completing secondary education or a program leading to an equivalent credential;
    - II. the child is enrolled in an institution which provides post-secondary or vocational education;
    - III. the child is participating in a program or activity designed to promote, or remove barriers to, employment;
    - IV. the child is employed for at least 80 hours per month; or
    - V. the child is incapable of doing any of the above described activities due to a medical condition.

### **SECTION 5. GENERAL PROGRAM REQUIREMENTS**

#### ***A. Standards for Foster Family Homes and Childcare Institutions***

The department has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights. The standards so established are applied to any foster family home or childcare institution receiving funds under title IV-E or IV-B.

The department has a process to determine if such standards should be waived in on a case-by-case basis for non-safety related standards for specific children placed in relative foster care.



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### ***B. Review of Amount of Payments and Licensing Standards***

The department reviews at reasonable, specific, time-limited periods to be established by the department:

- 1) the amount of the payment made for foster care maintenance and adoption assistance to assure their continued appropriateness; and
- 2) the licensing or approval standards for child care institutions and foster family homes.

### ***C. Fair Hearings***

The department has a system for granting an opportunity for a fair hearing to any individual whose claim for benefits under this plan is denied or not acted upon with reasonable promptness.

### ***D. Independent Audit***

The Agency of Human Services arranges for a periodic and independently conducted audit, no less frequently than once every three years, of the titles IV-E and IV-B programs.

### ***E. Child Abuse and Neglect***

If the department has reason to believe that a home or institution in which a child resides is unsuitable because of the abuse, neglect or exploitation of the child and whose care is paid in part or in full under the state titles IV-E and IV-B programs, the department will bring such condition to the attention of the appropriate court or law enforcement agency.

### ***F. Timely Interstate Placement of Children***

- 1) The department has in effect procedures for the orderly and timely interstate placement of children which provides that:
  - a) Within 60 days after receiving a request for a home study from another state the department will:
    - i) conduct and complete the study,
    - ii) return the completed study which addresses the extent to which the requested placement meets the needs of the child,
  - b) Components involving the education and training of the prospective foster or adoptive parents are not required to be completed within the applicable time period.
  - c) The department shall treat home studies received from other states as meeting requirements imposed by the department for the completion of a home study before

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placing a child in the home, unless within 14 days after the receipt of a home study the department determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child.

- d) Do not restrict other States from using private agencies to conduct home studies pursuant to ICPC.

#### ***G. Removal of Barriers to Interethnic Adoption***

The department has a plan approved by the Secretary that provides that neither the state nor any other entity in the state that received funds from the federal government and involved in adoption or foster care placement may:

- a) deny to any person the opportunity to become an adoptive or foster parent, on the basis of race, color, or national origin of the person, or of the child involved; or
- b) delay or deny the placement of a child for adoption or foster care, on the basis of race, color or national origin of the adoptive or foster parent or the child involved.
- c) with respect to a state, maintains any statute, regulation, policy, procedure or practice that, on its face, is a violation as defined in paragraphs 471(a)(18)(A) and (B) above.
- d) compliance with the Indian Child Welfare Act of 1978 (Pub.L.95-608) does not constitute a violation of section 471(a)(18).

#### ***H. Kinship Care***

1) The department has considered giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant state child protection standards. Policy has been established regarding identifying and considering potential kin resources.

2) The department shall exercise due diligence to identify and notify all adult grandparents and other adult relatives of the child within 30 days after placement that:

- a. the child has been removed from the parent's custody;
- b. options under Federal and Vermont law to participate in placement of the child, including what may happen if they fail to respond;
- c) describe requirements under 471(a)(10) to become a licensed foster home and services and supports that are available if the placement occurs;
- d) describes how the relative guardian of the child may subsequently enter into an agreement for guardianship assistance with the department.

#### ***I. Sibling Placement***

The department shall make reasonable efforts to:

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- 1) place siblings in the same out of home placement unless it would be contrary to the safety or well-being of any of the siblings (sibling separation must be documented in the appropriate section of the case plan); and
- 2) provide frequent visitation between siblings not placed together unless it would be contrary to the safety or well-being of any of the siblings (reasons for less than frequent or no visits must be documented in the appropriate section of the case plan).

***J. Safety Requirements for Foster Care and Adoptive Home Providers***

1. a) The department provides documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents including finger print based checks of national crime information databases (as defined in section 534(e)(3)(a) of Title 28, United States Code) before the parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child.

b) The department does not approve or license any prospective foster or adoptive parent, nor does the state claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the department finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

- i) Child abuse or neglect;
- ii) Spousal abuse;
- iii) A crime against a child or children (including child pornography); or,
- iv) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

c) The department does not approve or license any prospective foster or adoptive parent, nor claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster family home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the department finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

- v) Physical assault;
- vi) Battery; or,
- vii) A drug-related offense.

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d) in order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution contains documentation that verifies that safety considerations with respect to the staff of the institution have been addressed.

e) the department checks child abuse and neglect registries for information on any prospective foster or adoptive parent and on any other adult living in the home, before the prospective foster or adoptive parent may be approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child:

- i) The department checks its child abuse and neglect registry,
- ii) If a prospective parent or other adult has resided in any other state in the past 5 years, the department requests the other states to check their child abuse and neglect registries,
- iii) The department complies with abuse and neglect registry check requests for other states.

#### ***K. Inter-jurisdictional Adoption***

- a) The department will not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or
- b) fail to grant an opportunity for a fair hearing, as described in section 471(a)(12), to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the state or not acted upon by the state with reasonable promptness.

#### ***L. Quality Standards***

- 1) The department has developed and implemented standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.
- 2) The department will ensure that prospective foster parents are adequately trained with the appropriate knowledge and skills to provide for the needs of the child and that such preparation will be continued after the placement.

#### ***M. Compulsory School Attendance***

The department has a system for assuring that each school age child that is receiving a Title IV-E payment is either:

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- 1) enrolled in an a Vermont sanctioned elementary or secondary education institution;
- 2) instructed in elementary or secondary education at home in accordance with Vermont law;
- 3) in an independent study elementary or secondary educational program in accordance with Vermont law; or
- 4) incapable of attending school on a full time basis due to a medical condition and incapability is regularly updated in the case plan.

***N. Verification of Citizenship or Immigration Status***

- 1) The department will collaborate with Economic Services upon completion of an application for Medicaid for verification of citizenship or immigration status on all children in foster care.
- 2) The department ensures that children meet the definition of a “qualified alien” and are eligible for Federal foster care maintenance or adoption assistance payments.

**SECTION 6. GENERAL PROVISIONS**

***A. Personnel Administration***

- 1) The department and the local agencies administering a title IV-E program have established and will maintain methods of personnel administration in conformity with standards for a Merit System of Personnel Administration, prescribed in 5 CFR 900 by the U.S. Office of Personnel management pursuant to Sec. 208 of the Intergovernmental Personnel Act of 1970, as amended.
- 2) The department is implementing an affirmative action plan to assure equal employment opportunity in all aspects of personnel administration as specified in 5 CFR 900. The plan provides for specific action steps and timetables to assure such equal opportunity. The plan is available for review upon request.

***B. Safeguarding Information***

- 1) Subject to section 471(c), the department has safeguards restricting use of or disclosure of information concerning individuals assisted under the state plan to purposes directly connected with:
  - a) the administration of the title IV-E plan or any of the state plans or programs under Parts A, B, C or D of title IV or under titles XIX and XX or the supplemental security income program under title XVI, and
  - b) any investigation, prosecution, or criminal or civil proceeding conducted in

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- connection with the administration of any such plan or program, and
- c) the administration of any other federal or federally assisted program which provides assistance (in cash or in kind) or services directly to individuals on the basis of need, and
  - d) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency authorized by law to conduct such audit or activity.
- 2) The safeguards provided will prohibit the disclosure to any committee or legislative body (other than an agency referred to in clause 471(a)(8)(D) with respect to an activity referred to in such clause) of any information that identifies by name or address any applicant for or recipient of assistance under title IV-E of the Social Security Act.
  - 3) The department has safeguards in place to prevent unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to section 471(a)(20)(C) from being used for a purpose other than the conducting of background checks in foster and adoptive placement cases.
  - 4) In the use of child welfare records in State Court proceedings, section 471(a)(8) of the Act shall not be construed to limit flexibility of the department in determining policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to title IV-B or Title IV-E of the Act, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents and family.

### ***C. Reporting***

The department will make reports in such form and containing such information on the state's title IV-E program as are required by the Secretary of the Department of Health and Human Services (HHS). The department will comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such report.

### ***D. Monitoring***

The department will monitor and conduct evaluations of activities carried out in the state's Title IV-E program.



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#### ***E. Applicability of Department-Wide Regulations***

The department will comply with all the requirements of applicable regulations.

#### ***F. Availability of State Plans***

The state plans and plan amendments for titles IV-E and IV-B are available for public review and inspection.

#### ***G. Opportunity for Public Inspection of CFSR Materials***

The department makes available for public review and inspection all statewide assessments, report of findings, and program improvement plans developed as a result of a full or partial child and family services review.

### **SECTION 7. PERMANENT GUARDIANSHIP ASSISTANCE**

#### ***A. Introduction***

33 VSA § 4903(7) grants the authority to provide guardianship assistance, as follows: “The department may expend, within amounts available for the purposes, what is necessary to promote the welfare of children and adults in this state, including the strengthening of their homes wherever possible by . . . (7)providing aid to a child in the permanent guardianship of a relative if the child was in the care and custody of the department and was placed in the home of a relative for at least six months prior to the creation of the guardianship”.

#### ***B. Eligibility for Title IV-E Payments***

The department provides guardianship assistance payments for children who are, or are not eligible for federal Title IV-E benefits. To claim Title IV-E for a child on guardianship assistance, the department must have determined all of the following are true:

##### **1. Child Requirements**

The child must have been:

- a) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; and

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- b) eligible for title IV-E foster care maintenance payments during at least a six consecutive month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as meeting the licensure requirements as a foster family home.

Alternatively, the child may be the sibling of an eligible child who is placed with the same relative under the same kinship guardianship arrangement if the title IV-E agency and the relative guardian agree that the placement is appropriate. In such cases, the sibling does not have to meet the eligibility criteria in section 473(d)(3)(A) of the Social Security Act in order to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to costs of the legal guardianship.

For the purposes of guardianship assistance, sibling is defined as children related by biological, marital or legal ties (e.g., inclusive of step-siblings, half-siblings and adoptive siblings).

## **2. Required Determinations by Department**

The department must have determined that:

- a) return home or adoption are not appropriate permanency options;
- b) the child demonstrates a strong attachment to the prospective relative guardian; and
- c) the relative guardian has a strong commitment to caring permanently for the child.
- d) The child, if age 14 or older is willing to consent to the guardianship arrangement.

## **3. Relative Guardian Requirements**

For the purposes of guardianship assistance, the term “relative” includes a person who has biological and legal familial ties to the child, including persons with whom the child had a significant relationship prior to removal from the home.

All relative foster homes are required to be licensed in Vermont. As such, as articulated in Family Services Policy #222, the relative guardian has been subject to:

- a) fingerprint-based criminal records checks of the national crime information databases of the relative guardian(s) and
- b) child abuse and neglect registry checks of relative guardian(s) and other adults living in the guardian's home.

### ***C. Guardianship Assistance Agreement***

The department must negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian, and provide the prospective relative guardian with a copy of the agreement. The guardianship assistance agreement

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must be in place with a prospective relative guardian prior to the establishment of the permanent guardianship. The agreement will specify:

- a) the amount of, and manner in which the kinship guardianship assistance payment will be provided to the prospective relative guardian; the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance for which the child and relative guardian will be eligible under the agreement; and the procedure by which the relative guardian may apply for additional services and
- b) that the agreement will remain in effect without regard to the State residency of the relative guardian and
- c) that the department will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed \$2,000.

Once the relative guardian has committed to care for the child and has assumed legal guardianship the department may pay kinship guardianship assistance payments on behalf of a child to the relative guardian. Kinship guardianship assistance payments may not exceed the foster care maintenance payment the child would have received if he or she remained in a foster family home.

#### ***D. Medicaid Eligibility***

Children who receive Title IV-E funded guardianship assistance payments are categorically eligible for Medicaid in the state where the child resides.

#### ***E. Terminations of Payments.***

Payments are terminated when the department determines that:

- a) the child has attained the age of 18;
- b) the child has attained 21 years of age, if the department determines that the child has a mental or physical disability which warrants the continuation of assistance to age 21; or
- c) the child has not attained 18 year of age, if the relative guardians are no longer legally responsible for the support of the child; or.
- d) the child is no longer receiving any support from the relative parents.

The department may suspend or reduce guardianship assistance payments when:

- a) the child reenters foster care or another out-of-home setting or
- b) the guardian is in receipt of other sources of income are received by the guardian on behalf of the child.

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#### ***F. Case Plan Requirements***

For children whose permanency plan is placement with a relative and receipt of guardianship assistance payments, the child's case plan will include a description of:

- c) the steps that the department has taken to determine that it is not appropriate for the child to be returned home or adopted;
- d) the reasons for any separation of siblings during placement;
- e) the reasons why a permanent placement with a fit and willing relative through a permanent guardianship assistance arrangement is in the child's best interests;
- f) the efforts the department has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons; and
- g) the efforts made by the department to discuss with the child's parent or parents to discuss the permanent guardianship assistance arrangement, or the reasons why the efforts were not made.

#### ***G. Definition of Child***

For the purposes of a Title IV-E Permanent Guardianship, the term 'child' means

- a) an individual who has not attained 18 years of age; or
- b) In individual over the age of 18 who has not attained 21 years of age if the department has determined the child has a mental or physical handicap which warrants the continuation of assistance to age 21.

#### ***H. Identifying and Collaborating with Tribal Agencies***

Consistent with the Indian Child Welfare Act (ICWA), the Department for Children and Families, Family Services Division believes Indian children are best raised within their tribes and families, to support their families' beliefs and values and maintaining their tribes' culture and language. All children and youth deserve permanency and Family Services is committed to working with any tribal agencies to support this end. The ICWA can also be seen referenced in [Policy 82: CHINS](#).

Although Vermont does not have any federally recognized Indian tribes, Family Services will work with Indian tribes in other states to meet the permanency, safety, well-being and law abidance of a child Indian tribe member or child eligible to be a member of an Indian tribe.

- I. To protect the best interest of Indian children and to promote the stability and security of Indian tribes and families, staff must follow established Federal standards for working with families and Indian tribes to support Indian children.
  - A. Pursuant to 25 USC 1911(a) an Indian tribe has exclusive jurisdiction over any custody proceedings regarding an Indian child.

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1. 25 USC 1903(1) defines a child custody proceeding as action resulting in foster care placement, termination of parental rights, pre-adoptive placement, or adoptive placement.
2. 25 USC 1903(1) states that a child custody proceeding does not include placements resulting from an act which, if committed by an adult, would be deemed a crime, or an award in a divorce proceeding to one of the parents.

II. Family Services staff must determine as soon as possible if the child(ren)/youth or family are members of an Indian tribe or may be eligible to be members of an Indian tribe.

III. Family Services staff will contact the tribal child welfare staff to determine the status of the tribal membership or eligibility for membership.

IV. Upon confirmation of a tribal member's status, DCF will provide notice to the Tribal Child Welfare Agency regarding the Division's involvement with the Indian child.

A. The Tribal Child Welfare Agency will be invited to participate in an assessment as soon as possible.

1. If the Tribal Child Welfare Caseworker is not able to attend the initial visit, the family will be given the name and contact information so they may contact the Tribal Child Welfare Caseworker.
2. Family Services recognizes that in some instances geographic barriers will hinder the Tribal Child Welfare Caseworker from active involvement in an assessment and Family Services will strive to maintain open communication.

B. The Tribal Child Welfare Caseworker will be treated as a partner and will have shared jurisdiction in the completion of interviews, review of collateral information, and making decisions.

V. Family Services practices will include:

- A. Consultation with the Tribal Child Welfare Caseworker to review their agency history with the parent(s)/Indian custodian(s);
- B. Consultation with the Tribal Child Welfare Caseworker to request criminal background checks for Indian child, parent(s), or Indian custodian(s) as needed and to contact tribal law enforcement;
- C. If the tribal child welfare staff is unavailable, Family Services staff will proceed with decision making but will document the attempts to consult with the Tribal Child

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Welfare Caseworker and will inform the Tribal Child Welfare Caseworker of decisions as soon as possible; and

- D. Engagement in Safety Planning whenever signs of danger are present. The Tribal Child Welfare Caseworker will be an equal planner/decision maker in the planning process. The services that the Tribal Child Welfare Agency may be able to provide will be considered as part of the safety planning.

VI. If petitions for abuse and/or neglect are filed, no adjudicatory hearing may be heard until at least 10 days after receipt of the notice/petitions by the parent(s), or Indian custodian, and tribe.

- A. The parent, Indian custodian, or tribe may request, and will be granted, up to an additional 20 days to prepare for the hearing.
- B. Pursuant to RSA 169-C:15 III(d), the adjudicatory hearing must be held and completed, with written orders issued within 60 days of the date the petitions were filed.
  - 1. If the Indian child has been placed in out-of-home care, an adjudicatory hearing must be held and completed within 30 days of the date the petitions were filed, unless the court makes a written finding of extraordinary circumstances requiring the time limit to be extended.

VII. When circumstances rise to the level of immediate risk of serious harm, a petition must be filed to request an ex-parte order that it is contrary to the child/youth's welfare to remain in the home;

- A. The Indian child's parents and tribe must be provided an opportunity to identify placement preferences;
- B. The social worker will make every effort to ensure that the placement of an Indian child, in both an emergency and non-emergency situation, is completed with and has the approval of the Tribal Child Welfare Agency. When this is not possible the Tribal Child Welfare Agency will be notified as soon after the placement as possible, not to exceed 5 business days;
- C. Active remedial efforts (a standard higher than reasonable efforts) to prevent removal must be documented and should include the available resources of the extended family, the tribe, Indian social services agencies, and the individual parent(s)/Indian custodian(s);
- D. Clear and convincing evidence must be present that the Indian child is likely to suffer serious emotional or physical damage if maintained in either parents' custody or with the child's Indian custodian;
- E. The tribe must receive written notification before an Indian child may be removed from his or her family or placed in an adoptive or foster care placement. Collaborating with the tribe during the assessment or case does not negate the official written notification that must be sent;



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1. If the specific tribe the child is either a member or eligible for membership in is known, a cover letter providing notification of the circumstances and the petition must be sent to the tribe certified with a return receipt requested.
  2. If the specific tribe is not known and verified, the notice and petition should be sent to the Secretary of Interior identified by the Bureau of Indian Affairs, certified with a return receipt requested.
    - (a) The Secretary of Interior has 15 days following receipt of the letter to provide the notice to the parent, or Indian custodian, and tribe.
  - F. Any Indian child entering out-of-home care should be placed in a setting that complies with the standards for ICWA and is the least restrictive setting.
  - G. Pursuant to 25 USC 1922, nothing in the Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child from his/her parent(s) or Indian Custodian, or prevent the emergency placement of such Indian child in a foster home or institution under VT state law, to prevent imminent physical damage or harm to the Indian child.
    1. DCF will ensure that the placement terminates immediately upon resolution of the imminent risk; or
    2. The transfer of jurisdiction to the appropriate Tribal Court.
- VIII. Either parent, the Indian custodian, or the Indian child's tribe may request verbally or in writing to transfer the jurisdiction to an applicable tribal court at any point through the life of the case.
- A. The petition is the first opportunity for a tribe to request that the case be transferred to tribal court.
  - B. Diligence in providing notice early in a case will better meet the child(ren)/youth's need for permanency as parties do not lose their right to request a transfer if they are unable to be located and may request a transfer later in the case.
  - C. Any matter petitioned for transfer to a tribal court must be upheld/transferred unless:
    1. Either parent objects to such transfer;
    2. The Tribal Court declines jurisdiction; or
    3. The court determines that good cause exists to deny the transfer, which may include:
      - (a) The Indian child's tribe does not have a tribal court;
      - (b) The proceeding is at an advanced stage AND the petitioner did not file the petition promptly; or
      - (c) The Indian child is over 12 years old and objects to the transfer.
      - (d) DCF will cooperate to support the transfer of placement and care responsibility to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement in the same manner a child/youth would be

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transferred to another state pursuant to an Interstate Compact for the Placement of Children (ICPC) or Interstate Compact for Juveniles (ICJ).

- IX. Unless the Court has made a judicial finding that there is good cause to deviate from ICWA placement preferences or the Indian child's tribe has established a different order of preference, the order of placement preference will be as follows:
- a) A member of the Indian child's extended family (either Native or non-Native);
  - b) A foster home licensed, approved, or specified by the Indian child's tribe;
  - c) An Indian foster home licensed/approved by an authorized non-Indian licensing authority;
  - d) An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs; or
  - e) When no preferred placement is available as specified above, active efforts will be made to place the Indian child with a family committed to enabling the child to have extended family visitation and participation in the cultural, spiritual, religious, and ceremonial activities of the Indian child's tribe.
- X. The approval of Native American resource homes, either on the reservation or within other tribal lands, is conducted by the tribe.
- XI. The approval process of Native American resource homes not on the reservation or other tribal lands will be conducted by the tribe unless they request DCF conduct the licensing of the home.